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## Fairhaven Zoning Board of Appeals

Tuesday, October 5, 2021

### Minutes of Meeting

#### I. ADMINISTRATIVE BUSINESS

The meeting was held remotely via Zoom per the Governor's orders during the pandemic that began in March 2020.

Peter DeTerra opened the meeting at 6:00p.m.

#### Quorum/Attendance:

Chairman Peter DeTerra introduced the members of the Board:

Peg Cook, full member of the Board; Ruy DaSilva, associate member of the Board; Kenneth Kendall, full member of the Board; Darryl Manchester, full member of the Board; Alberto Silva, associate member of the Board; and Jaime DeSousa, associate member of the Board.

**Absent:** Francis Cox.

Chairman DeTerra read the procedures of recording and open meeting law information.

Building Commissioner and Zoning Enforcement Officer Chris Carmichael was also present.

Acceptance of Minutes – Kenneth Kendall made a motion to approve the minutes of September 7, 2021 and was seconded by Jaime de Sousa. The motion passed unanimously via roll call vote by Peg Cook, Ruy DaSilva, Kenneth Kendall, Darryl Manchester, Alberto Silva, Jaime DeSousa and Peter DeTerra.

#### II. PUBLIC HEARINGS:

1. Administrative Appeal by Fairhaven Shipyard – re: 7 Union Street. REF#: ZBA-AA 01: Seeking reversal of zoning determination by the Town of Fairhaven Building Commissioner dated February 20, 2020. (Application attached)–**Continued** from April 7, 2020, May 5, 2020, June 2, 2020, July 7, 2020, August 11, 2020, September 2, 2020, December 1, 2020, January 5, 2021, February 2, 2021, March 2, 2021, April 6, 2021, May 4, 2021, June 2, 2021, July 6, 2021, August 3, 2021 and September 7, 2021. Applicant requested **continuance to November 2, 2021**.

Motion to continue to November 2, 2021 was made by Kenneth Kendall and seconded by Alberto Silva. The motion passed unanimously via roll call vote by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester, and Alberto Silva.

2. Administrative Appeal by A1 Crane – re: 86-88 Middle Street. REF#: ZBA-AA-02: Administrative Appeal from a letter dated April 7, 2020 from the Building Commissioner stating that the operation on the site is in violation of the Mixed-Use zoning regulations. Continued per applicant's request to September 2, 2020, November 3, 2020, December 1, 2020, January 5, 2021, February 2, 2021, March 2, 2021, April 6, 2021, May 4, 2021, June 2, 2021 and July 6, 2021. Previous request had been made and approved for continuance to October 5, 2021.

Motion to continue to **November 2, 2021** was made by Alberto Silva and seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester, and Alberto Silva.

**3. REF# ZBA-2022-009: 123 Weeden Road. Applicant and Owner: Aguiar, Kyle J.** Requesting approval of a proposed 1,200 sq. foot addition to extend kitchen and living room. The applicant also seeks a finding from the board that the existing non-conforming structure may be extended to include the side addition, front addition and rear setbacks; as well as the height to the maximum of 35' and that the alteration is not substantially more detrimental than the existing non-conforming use to the neighborhood, pursuant to MGL 40, Section 6. Previously continued to October 5, 2021.

Motion to continue to **November 2, 2021** was made by Jaime DeSousa and seconded by Kenneth Kendall. The motion passed unanimously via roll call vote by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester, and Alberto Silva.

**4. REF#: ZBA-2022-014: 5 Almond Street. Applicant: David Armstead; Owner: David and Sharon Armstead, Trustees.** 198-9: applicant seeks a finding from the Board for construction of a 20'x11' enclosed three-season porch on top of the existing sun deck and that the proposed alteration is not substantially more detrimental than the existing non-conforming use to the neighborhood in the RR District pursuant to MGL 40A, Section 6.

Applicant explained to the Board that when he spoke with the Building Enforcement Officer, the point of some 25 years ago there was a dispute with an abutter, copy of agreement duly recorded at the Bristol County Registry of Deeds was given to applicant.

The Building Enforcement Officer explained to the Board that he rejected the applicant's request based on the flood zone. According to the Officer, to meet the present requirements, applicant would have to raise the existing structure to the flood height, in addition, the deed restriction, stating that the deck cannot be enclosed. The Officer further stated that applicant needs to reach out to the Board of Building Regulations and Standards for Flood Zone as well as seek the assistance of an attorney as to the deed restriction. Mr. Manchester confirmed if indeed the Town Council reviewed that restriction with him a couple of months ago, and the Town cannot administer a building permit due to the said restriction. Mr. Carmichael referred the Board's attention to his letter to the applicant that the Officer's objection was based on flood zone.

The Board members suggested that applicant withdraws his application without prejudice until he resolves the deed restriction issue in the Land Court, which the applicant agreed to do.

Motion to withdraw without prejudice made by Kenneth Kendall and seconded by Ruy DaSilva. The motion passed unanimously via roll call vote by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester and Alberto Silva.

**5. REF#: ZBA-2022-015: 8 Mill Road. Applicant: Scott Simpkin; Owner: Susan M. Bergeron, Trustee.** 198-9: Variance request area and frontage from the required square footage for a proposed construction of a single-family home on the buildable lot in a RA District, which calls for a 100' frontage and lot frontage measures 68.34', and area calls for 15,000 sq. ft., wherein the lot contains 6,004 sq. ft.

Applicant explained that he acquired the property in 2010 the same was foreclosed. The then existing building was demolished that same year and he always to rebuild on that property, which he is now in a position to do so. As he applied for a permit for construction, he was informed that construction should have taken place within two (2) years after demolition, something he was not aware of that.

Bernie Roderick, 10 Mill Road, an abutter, spoke in favor of the petition. He stated that he has no qualms against the applicant's plan and a new structure will enhance the quality of the neighborhood. He added that he feels the proposed would be a quality structure, and asked the Board to grant the applicant's request.

Zachary Aubut, 16 Mill Road, another abutter, spoke against the petition. Mr. Aubut stated that he understands the predicament the applicant find himself in, but, with due permission, he invoked the old adage "ignorance of the law is no excuse" and applicant did purchase an unbuildable lot. He added that due to the size of the lot and the parking situation on that street, a parking congestion will be had at the end of Mill Road, turning onto Route 6, and therefore he opposes the building a new dwelling on this lot.

Mr. Roderick offered a rebuttal to Mr. Aubut's opposition explaining that some of the owners Aubut referred to, do choose to park on the street, and not in their own driveways.

Chairman DeTerra questioned Commissioner Carmichael as to the possibility of two (2) adjoining lots, held in common ownership would be considered one (1), pursuant to the law.

Motion to approve was made by Jamie DeSousa and seconded by Alberto Silva. Members voting in favor via roll call vote by Peg Cook, Ruy DaSilva, Jamie DeSousa and Darryl Manchester. Kenneth Kendall, and Alberto Silva voted against. The motion did not pass.

6. REF#: ZBA-2022-016: 43 Francis Street. Applicant: Geoffrey Haworth; Owner: Gary and Tammy Chan. The applicant seeks a finding from the Board, the existing non-conforming structure may be extended to include a vertical addition of a second floor, and that the addition of 1,150 s. ft. is not substantially more detrimental than the existing non-conforming use to the neighborhood, per MGL 40A, Section 6.

Applicant Haworth appeared representing this clients, Gary and Tammy Chan who desire to put a second-floor addition on their home. The lot size is 14,000 sq. ft., while the requirements call for a minimum lot size of 15,000 sq. feet, he explained stressing there is no proposal to increase the footprint but going up in height and not exceeding the maximum height of 35 feet.

Kenneth Kendall made a motion to approve, which was seconded by Ruy DaSilva. Via roll call unanimous vote by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester, Alberto Silva, the appeal was approved.

7. REF#: ZBA-2022-017: 56 Balsam Street. Applicant: Edmund N. Lacombe; Owner: Dawn E. Lacombe (formerly Tavares).

Administrative Appeal request from the zone Enforcement Officer not to enforce removal of discarded boat and trailer and empty trailer (non-usable) in front of 56 Balsam Street, on and in front of conservation land and water frontage, pursuant to MGL 40A, Section 7.

Applicant appeared before the Board and explained that there is conservation land in front of his property as well as the land in front of his neighbor's located at 54 Balsam Street. His neighbor reseeded the conservation grass for about 15 feet to a point, about 3 years ago, where he put an empty rusty trailer, and the following year he also put a boat and trailer on his property, but right in front of applicant's house, although the boat and the trailer were never used. Before that, the boat and trailer had been in the driveway, and applicant suspects being owned by the son.

Chairman DeTerra asked Building Enforcement Officer to explain the matter further, and Officer Carmichael explained this matter to be an appeal to his decision not to enforce the removal the boat and the trailer after having inspected both properties and determined that both properties and a boat and trailer in the back yard. Mr. Carmichael further declared that he could not see enforcing one over the other, so he declined to enforce, adding that there are nothing in the by-laws prohibiting parking a boat and trailer in the back yard.

Applicant further explained that since he appealed the decision, both the trailer and the boat existing in his neighbor's yard were removed.

Mr. DeSousa asked Officer Carmichael to opine and he answered that, pursuant to MGL 40A, Section 7, he can decline a request to enforce a zoning matter. The complaint the applicant has applied for was not in the by-laws, so he cannot enforce it, therefore he declined to enforce. The appeal is for overruling Mr. Carmichael's decision to enforce, and now being a moot point because the boat and the trailer are no longer there.

Motion was made not to override the decision of the Building Enforcement Officer by Jaime DeSousa and seconded by Kenneth Kendall. Via roll call vote by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester, and Alberto Silva.

8. REF#:ZBA-2022-018: 101 Ebony Street. Applicant: John M. Mota; Owner: John M. and Diane M. Mota. Special Permit request to store a 28.5" mobile home on the premises pursuant to zoning By-Law 198-28.

Motion to continue to **November 2, 2021** was made by Alberto Silva and seconded by Jaime DeSousa. The motion passed unanimously via roll call vote by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester, and Alberto Silva.

Motion to open up the hearing for 123 Weeden Road [*#3 on the Agenda*] made by Jaime DeSousa, seconded by Kenneth Kendall, and it passed unanimously via roll call vote by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester, and Alberto Silva.

Motion to continue the matter to **November 2, 2021** was made by Alberto Silva, which was seconded by Ruy DaSilva. The motion passed unanimously via roll call vote by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester, and Alberto Silva.

### III. NEW BUSINESS:

Chairman DeTerra informed the Board that there are three (3) invoices for payment. Kenneth Kendall made a motion to pay said invoices, which was seconded by Jaime DeSousa. The

motion passed unanimously via roll call vote by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester, and Alberto Silva.

Kenneth Kendall made a motion to adjourn which was seconded by Jaime DeSousa. Roll call vote was unanimous by Peg Cook, Ruy DaSilva, Jaime DeSousa, Kenneth Kendall, Darryl Manchester, Alberto Silva and Peter DeTerra and meeting adjourned at 6:50p.m.

Respectively submitted,

**Maria J. Carvalho**

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Recording Secretary

